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VB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/161,122	09/25/98	JIN	H 7682-45

020583
PENNIE AND EDMONDS
1155 AVENUE OF THE AMERICAS
NEW YORK NY 10036-2711

HM22/1117

EXAMINER

BRUMBACK, B

ART UNIT

PAPER NUMBER

1643

5

DATE MAILED: 11/17/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/161,122

Applicant(s)

Jin et al.

Examiner

Brenda Brumback

Group Art Unit

1643

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-24 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-24 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Please Note: In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

Election/Restriction

- I. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1, 17, and 13 to the extent that it reads on claim 17, drawn to an isolated infectious respiratory syncytial virus (RSV) particle comprising a genome or antigenome with at least one lethal deletion in the M2-ORF1 gene, and to a vaccine comprising RSV with a mutated M2 gene, classified in class 424, subclass 205.1.
 - II. Claims 2, 18, and 13 to the extent that it reads on claim 18, drawn to an isolated infectious RSV particle comprising a chimeric genome or antigenome encoding antigenic polypeptides of both RSV-A and RSV-B, to a vaccine comprising the particle, classified in class 424, subclass 199.1.
 - III. Claims 3, 15, and 13 to the extent that it reads on claim 15, drawn to an isolated infectious RSV particle having an attenuated phenotype comprising an RSV genome or

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antigenome with an L gene mutation, and to a vaccine comprising the particle, classified in class 435, subclass 205.1.

- IV. Claims 4, 5, claims 1-3 to the extent that they read on claims 4 and 5, claims 19, 20, and 13 to the extent that it reads on claims 19 and 20, drawn to an isolated infectious RSV particle comprising a heterologous sequence and to vaccines comprising chimeric RSV with a heterologous gene, classified in class 424, subclass 199.1.
- V. Claims 6-11, drawn to recombinant RNA molecules, classified in class 536, subclass 23.72.
- VI. Claim 12, drawn to a method of making a chimeric RSV, classified in class 435, subclass 172.3
- VII. Claim 14, drawn to a vaccine comprising a chimeric RSV with a mutated SH gene and to claim 13 to the extent that it reads on claim 14, classified in class 424, subclass 199.1.
- VIII. Claim 16, drawn to a vaccine comprising a chimeric RSV with a mutated NS1 gene and to claim 13 to the extent that it reads on claim 14, classified in class 424, subclass 199.1.
- IX. Claims 21-24, drawn to attenuated replication-defective RSV, classified in class 424, subclass 204.1.

- 2. The inventions are distinct, each from the other because of the following reasons:

The products of Inventions I-IX are patentably distinct products having different and distinct structures and functions.

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/or their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Brumback whose telephone number is (703) 306-3220. If the examiner can not be reached, inquiries can be directed to Supervisory Patent Examiner Lynette Smith whose telephone number is (703) 308-3909. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Examiner Brenda Brumback, Art Unit 1643 and should be marked "OFFICIAL" for entry into prosecution history or "DRAFT" for consideration by the examiner without entry. The Art Unit 1643 FAX telephone number is (703)-305-3014. FAX machines will be available to receive transmissions 24 hours a day. In compliance with 1096 OG 30, the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday or Federal Holiday with the District of Columbia, in which case the OFFICIAL date of receipt will be the next business day.

Brenda Brumback
November 15, 1999


DONNA WORTMAN
PRIMARY EXAMINER